Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing and	)	CC Docket No. 98-170
Billing Format	)	
	)	
National Association of State Utility	)	
Consumer Advocates' Petition for	)	
Declaratory Ruling Regarding Monthly	)	
Line Items and Surcharges Imposed	)	
by Telecommunications Carriers	)	

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES' PETITION FOR DECLARATORY RULING

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SUMMARY

A principal goal of the federal telecommunications laws is to ensure that the charges carriers, both wireline and wireless, impose on consumers for telecommunications services are "just" and "reasonable." Under these laws, the Commission is obligated to prescribe just, fair and reasonable carrier practices in order to ensure that telecommunications service is provided to all Americans at just and reasonable charges. In its "Truth-in-Billing" ("TIB") docket the Commission undertook to prescribe carrier practices to help consumers avoid falling prey to unscrupulous telecommunications carriers who hid or mislabeled unauthorized charges on consumers' telephone bills. In its 1999 Order in the TIB docket, the Commission adopted principles and guidelines designed to provide consumers with basic information they need, both to make informed choices in a competitive telecommunications market and to protect themselves from unscrupulous competitors.

The Commission's efforts represented a significant attempt to address problems that were the byproduct of competition: slamming, cramming, and confusing billing practices designed to gouge consumers. Those efforts continued in the Commission's 2000 joint policy statement with the Federal Trade Commission, addressing deceptive and misleading advertising for certain long-distance services.

Unfortunately, the Commission never finalized certain aspects of its 1999 Order. Even more unfortunately, the Commission inadvertently undid much of what it sought to do when, in its December 2002, order addressing universal service contributions, the Commission opened the door for carriers to recover ordinary operating costs through separate line items. Carriers have not overlooked the Commission's lack of follow-through in the TIB docket, nor have they

overlooked the opportunities afforded them by the Commission's 2002 universal service decision.

In the last few years, wireline and wireless carriers have concocted line item charges, fees, and surcharges, purporting to recover all manner of "regulatory," "administrative," or "government-mandated" costs, but which do nothing more than soak consumers for the carriers' ordinary operating costs. The number of carriers imposing such charges, the number of charges being imposed, and the amount of revenue recovered through such line items suffices to demonstrate the magnitude of the problem.

Though the carriers' monthly line items differ in terms of what they are called and what the carriers claim to recover through the charges, they are alike in many respects. All are misleading; some are downright deceptive. All the monthly line items are subject to the "full and non-misleading billed charges" principle adopted by the Commission in its 1999 Order in the TIB docket. Moreover, all the line item charges ought to be viewed in accordance with the principles set forth by the Commission in its 2000 joint policy statement regarding misleading advertising for long-distance services. Furthermore, the carriers' charges are misleading and deceptive in their application, bear no demonstrable relationship to the regulatory costs they purport to recover, and therefore constitute unreasonable and unjust carrier practices and charges.

As the Commission rightly noted in its 1999 Order in the TIB docket, competition will not cure the plague of line item charges complained of in this Petition. Not only is competition threatened by the carriers' practices and charges, competition may be part of the problem. Competition rewards efficient carriers and punishes inefficient carriers – but only if consumers can tell which carriers offer better service at lower rates. Perversely, without government

regulation, inefficient carriers can hide their inefficiencies in line item charges while maintaining and advertising monthly and usage rates that are as low as, or even lower than, their competitors. Only with great difficulty can consumers ascertain the true cost of their service. As a result, inefficient carriers are not punished by the competitive market, consumers are stymied in their efforts to shop between carriers based on accurate information about the true cost of telecommunications service and carriers are able to inflate their bottom-lines and blame it on the government. The line-item contagion has spread to the point that the Commission must act in order to rescue consumers and the competitive market from the carriers' practices. To be clear, NASUCA is not asking the Commission to overturn prior decisions allowing carriers to recover specific assessments mandated by regulatory action through line item charges. Rather, NASUCA is asking the Commission to declare that carriers are prohibited from imposing line items *unless those charges are expressly mandated by federal, state or local regulatory action.* NASUCA is also asking the Commission to declare that line items allowed must closely match the regulatory assessment.

The relief NASUCA seeks will advance the pro-consumer and pro-competitive goals of the federal telecommunications laws. Consumers will benefit by being able to shop among carriers for the lowest rates without being subjected to deceptive, misleading or confusing billing practices. The competitive marketplace will likewise benefit. Carriers who cannot compete efficiently will not be able to bury their costs in monthly line items while maintaining deceptively low monthly and usage-based rates.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES' PETITION FOR DECLARATORY RULING

Pursuant to 47 C.F.R. §1.2, the National Association of State Utility Consumer Advocates ("NASUCA"),[1] by its undersigned counsel, hereby petitions the Commission to issue a declaratory ruling prohibiting telecommunications carriers from imposing monthly line-item charges, surcharges or other fees on customers' bills, unless such charges have been expressly mandated by a regulatory agency. These line items and surcharges recover portions of the carriers' ordinary operating costs, and serve only to inhibit price comparison and to create customer confusion. The Commission should declare such carrier practices to be in violation of

[1] NASUCA is a voluntary, national association of 44 consumer advocates in 42 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

either or both the Commission's "Truth-in-Billing" order[2] or Sections 201 and 202 of the Communications Act of 1934, as amended ("1934 Act"),[3] for the reason that such practices are: (1) misleading and deceptive; (2) unreasonable and unjust; and (3) anticompetitive and anti-consumer.

I. INTRODUCTION.

NASUCA's members represent millions of American consumers served by public utilities in state and federal regulatory proceedings, before Congress and federal regulatory agencies, and before state and federal courts on matters concerning rates and service quality. In addition to furthering members' roles as utility consumers' advocates, NASUCA is charged with exchanging ideas, improving consumer representation in federal and state government, and educating and encouraging greater participation by consumers in the regulatory process.[4]

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[2] *See In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72 (rel. May 11, 1999) ("*TIB Order*"). In the FNPRM portion of the *TIB Order*, the Commission sought comment: (1) on whether to make its "truth-in-billing" rules applicable to commercial mobile radio service ("CMRS") providers, and (2) regarding the specific labels carriers should be allowed to use for line-item charges. *TIB Order*, at ¶¶ 69-72. The Commission has not issued any order regarding this further notice, however, and the docket has been inactive for the past four years. *See In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Order, DA 00-893 (rel. April 19, 2000).

[3] Ch. 652, title I, Sec. 1, 48 Stat. 1064 (June 19, 1934), *codified at* 47 U.S.C. §151 *et seq.*

[4] Article II of NASUCA's Articles of Incorporation and Article II of NASUCA's Constitution both provide that the purpose of the association is to "improve communication among members, to enhance their impact on public policy at the State and Federal levels, and otherwise to assist them in the representation of utility consumer interests." Articles of Incorporation, National Association of State Utility Consumer Advocates, Inc., Art. II, Charter Number 752992 (on file with Florida Department of State), 17 Jun. 1980. Article X of the constitution provides for the adoption of By-Laws. Article V of NASUCA's By-Laws authorize NASUCA to "take positions in regulatory or judicial litigation, by majority vote, in behalf of the organization." Article V, (Footnote con't.)

On behalf of utility consumers, NASUCA was active in the legislative process that led to enactment of the 1996 Act, which substantially amended the 1934 Act. NASUCA is active before the Commission in proceedings implementing the 1996 Act. In addition, NASUCA is represented on the Federal-State Joint Board on Universal Service and other Commission advisory bodies.

Consistent with its role as a representative of state utility consumer advocates, NASUCA seeks to advance, and enforce, the pro-consumer goals and provisions of both the 1934 Act and the 1996 Act. The 1934 Act protects consumers by requiring that common carriers' services, practices and charges are "just" and "reasonable," and authorizes the Commission to require carriers to cease and desist from engaging in practices that are unjust or unreasonable, and by giving persons the right to compensation where injured by common carriers' acts or practices.[5]

On June 18, 2003, NASUCA adopted a resolution opposing carriers' imposition of so-called "regulatory" fees, line items and surcharges upon their customers.[6] NASUCA's Petition to the Commission continues and furthers the June 2003 resolution opposing such carrier practices.

II. REGULATORY AND FACTUAL BACKGROUND.

A. The Provisions of the 1934 and 1996 Acts.

One of the principal goals of federal telecommunications law is ensuring that the charges carriers impose on consumers for telecommunications services are "just" and "reasonable." The

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Section 3 (b) of the By-Laws of the National Association of State Utility Consumer Advocates, Certified June, 1993.

[5] *See, e.g.*, 47 U.S.C. §§ 201, 205-207.

[6] *See* http://www.nasuca.org/res/telco/telco2003-02.php.

1934 Act states that that carrier charges for telecommunications service must be "reasonable." This purpose is embodied in the statutory section that establishes the Commission:

> For the purpose of regulating interstate . . . commerce in communication by wire and radio so as *to make available, so far as possible, to all the people of the United States* . . . a rapid, efficient, Nation-wide, and world-wide *wire and radio communications service with adequate facilities at reasonable charges* . . . .[7]

This purpose is reiterated elsewhere in the 1934 Act. For example, Section 201 addresses the rates and charges carriers may establish in connection with wireline or wireless communications service and declares unlawful "[a]ll charges, practices, classifications, and regulations for and in connection with communication service" that are not "just and reasonable."[8] Section 205, which is the heart of the Commission's enforcement authority, authorizes the Commission to take action when it finds carriers' charges or practices to be unjust or unreasonable and provides, in relevant part:

> Whenever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of the opinion that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge . . . to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent that the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any charge other than the charge so prescribed . . . and

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[7] 47 U.S.C. § 151 (emphasis added).

[8] 47 U.S.C. § 201(b).

[9] 47 U.S.C. § 205(a).

shall conform to and observe the regulation or practice so prescribed.[9]

Consumers' entitlement to just and reasonable charges is not confined to wireline service. Instead, Congress made it abundantly clear that consumers' entitlement to reasonable and just charges extends to mobile, or wireless, telecommunications services as well. Section 332 of the 1934 Act provides that:

> A person engaged in the provision of a service that is a commercial mobile service shall . . . be treated as a common carrier for purposes of this chapter, except for such provisions of subchapter II of this chapter as the Commission may specify be regulation as inapplicable to that service or person. In prescribing or amending any such regulation, *the Commission may not specify any provision of section 201, 202, or 208 of this title*, and may specify any other provision only if the Commission determines that –
>
> (i) enforcement of such provision is not necessary in order to ensure that the *charges, practices, classifications, or regulations for or in connection with that service are just and reasonable* and are not unjustly or unreasonably discriminatory;
>
> (ii) enforcement of such provision is not *necessary for the protection of consumers* . . . .[10]

The 1996 Act continued the pro-consumer goals of the 1934 Act by introducing competition as a means for achieving fair and reasonable charges and practices for telecommunications services. As stated in its Preamble, the 1996 Act's overriding purpose is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the deployment of new telecommunications technologies." Accordingly, it is clear that competition is not merely intended to enhance telecommunications carriers' corporate interests; Congress has directed that

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[10] 47 U.S.C. § 332(c)(1)(A) (emphasis added).

competition be utilized to serve the 1934 Act's pro-consumer objectives.

While much of the 1996 Act is concerned with establishing the parameters of the new, competitive relationship between telecommunications carriers, numerous sections continue and expand upon the pro-consumer goals of the federal telecommunications laws, as expressed in the Preamble just quoted. Section 254, for example, contains a specific subsection, entitled "Consumer Protection," that requires states and the Commission to "ensure that universal service is available at rates that are just, reasonable and affordable."[11] Similarly, Section 258 of the 1996 Act reinforces the pro-consumer goals of the federal telecommunications laws by expressly prohibiting "slamming" – illegal changes in subscribers' (*i.e.*, consumers') carrier selections.[12] In like fashion, Section 701 added several provisions designed to protect consumers from billing abuses associated with the provision of certain "pay-per-call" services.[13]

Thus, the Commission is clearly authorized – indeed it is obligated – to consider the practices complained of by NASUCA herein, and to prescribe just, fair and reasonable carrier practices in order to ensure that telecommunications service is provided to all Americans at just and reasonable charges. This includes the authority to prescribe the format and presentation of such charges in order to eliminate confusion and the possibilities for fraud, and to enhance competition.

B. The Commission's Truth-in-Billing Order.

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[11]47 U.S.C. § 254(i).

[12]47 U.S.C. § 258.

[13]47 U.S.C. § 228(c)(8).

The Commission has often recognized the pro-consumer aspects of the federal telecommunications laws. Most importantly – for purposes of this Petition – the Commission reiterated and reinforced its pro-consumer mission in the *TIB Order*.

In addition to concerns related to slamming and cramming practices by carriers, the *TIB Order* addressed the broader issue of consumers' confusion regarding charges on their monthly telephone bills. In this regard, the Commission noted that "virtually every state and consumer advocacy group that commented," as well as several members of Congress, identified consumer confusion as a growing concern that the Commission should address.[14] Likewise, the Commission noted that the Federal Trade Commission ("FTC") asserted that Commission intervention "is necessary to help consumers avoid 'falling prey' to unscrupulous service providers who hide or mislabel unauthorized charges on consumers' telephone bills."[15]

In the *TIB Order*, the Commission adopted a number of common sense "truth-in-billing" principles and guidelines designed to ensure that consumers are provided with basic information they need to make informed choices in a competitive telecommunications market, and protected from unscrupulous competitors. Both objectives are threatened by the epidemic of carrier line items, surcharges and fees that are the subject of this Petition.

The regime of surcharges adopted by both wireline and wireless carriers is not only misleading and deceptive, it is also ultimately anticompetitive and uneconomic. The line item surcharges and fees at issue frustrate consumers' ability to make informed decisions about

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[14] *Id.*, ¶ 4.

[15] *Id.*

carriers based on rates. Worse, the competitive telecommunications market actually provides an incentive for carriers to adopt such surcharges in order to present charges to customers that are deceptively lower than they otherwise would be. The result is economic inefficiency, because carriers can hide their true costs of service by coupling low usage and monthly charges with high line item surcharges and fees. Further, carriers have incentives to over-recover their costs through such surcharges.[16] These ills require the Commission to more vigorously enforce, and ultimately expand, the pro-consumer protections established in the *TIB Order*.

C. The Commission's USF Contribution Order.

In December 2002, the Commission fundamentally changed the manner in which carriers were allowed to recover the assessment imposed to cover contributions to federal universal service programs.[17] In the *Contribution Order* the Commission prohibited carriers from marking-up federal universal service fund ("USF") assessments on end-users above the Commission-authorized assessment factor. The Commission based its decision on the customer

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[16]Unfortunately, certain loopholes in the Commission's *TIB Order* provide the carriers with ample opportunity to over-recover the costs they ostensibly recover via surcharges. For one thing, the Commission never finalized rules regarding standardized labels, as it indicated it would do. *TIB Order*, ¶¶ 55-56. Nor did the Commission require that carrier charges be imposed only when expressly authorized by state or federal regulatory action, as in the case of universal service fund assessments, enhanced 911 ("E911") surcharges, federal and state telecommunications taxes and other taxes collected by carriers on behalf of the government. Third, the Commission – in neither the *TIB Order* nor in any of the orders establishing the regulatory programs the costs of which the carriers claim they recover – never required carriers to demonstrate that the monthly charges being imposed bore any relationship to the costs directly incurred as a result of such regulatory programs. As a result, carriers have been given *carte blanche* to create these charges, and recover as much money as they think their customers will bear.

[17] *In the Matter of Federal State Joint Board on Universal Service*, Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. Dec. 13, 2002) ("*Contribution Order*").

confusion caused by USF surcharges, the possible over-recovery of costs, and adverse impacts on competition:

> We acknowledge that carriers in the past may have marked up their universal service line items above the relevant assessment amount for uncollectibles and other factors. We are concerned, however, that the flexibility provided under our current rules may have enabled some companies to include other completely unrelated costs in their federal universal service line items....
>
> The elimination of mark-ups in carrier universal service line items will also alleviate end-user confusion regarding the universal service line item. ...This requirement also should foster a more competitive market by better enabling customers to comparison shop among carriers. This furthers our goal of promoting transparency for the end user in order to facilitate informed customer choice.[18]

However, at the very moment it took steps to curb unreasonable carrier practices in connection billing customers to recover the carrier's USF assessment, the Commission opened the door for carriers to impose additional line items on consumers:

> Contributing carriers still will have the flexibility to recover their contribution costs through their end-user rates if they so choose and to recover any administrative or other costs they currently recover in a universal service line-item through their customer rates *or through another line item.*
>
> [W]e clarify that *we do not believe it appropriate for carriers to characterize these administrative and other costs as regulatory fees or universal service charges after April 1, 2003.* These costs, in our view, are no different than other costs associated with the business of providing telecommunications service and may be recovered through rates *or other line item charges.*[19]

The Commission's open invitation to carriers to impose new line items and surcharges was quickly accepted. Within a short time, consumers experienced an increase in existing surcharges and a proliferation of new line items on their bills. These line items, surcharges and fees –

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[18] *Id.*, ¶¶ 48, 50.
[19] *Id.*, ¶¶ 40, 54 (emphasis added).

described in detail below – have led to greater customer confusion, exactly the opposite result sought by the Commission in the *TIB Order*. Moreover, these line items have further distorted the competitive price signals consumers receive and act upon, all to the detriment of the public interest.

D. The Carrier Surcharges And Practices At Issue.

Since the *TIB Order* was issued in 1999, almost five years ago, interexchange carriers ("IXCs") and commercial mobile radio service ("CMRS") providers (*i.e.*, wireless carriers") have increasingly resorted to imposing monthly line items, surcharges and fees ostensibly to recover certain of their operating costs. In recent years, so-called "regulatory compliance" surcharges have mushroomed – in terms of the numbers of carriers imposing them, the number of charges being imposed by carriers on consumers' monthly telephone bills, and the amount of revenue being recovered via such fees.[20] And, like mushrooms, these surcharges have blossomed in the dark – out of the bright light of regulatory scrutiny.

During this same time, carriers have generally reduced usage-based rates, both in response to government-imposed reductions in both interstate and intrastate access charges, as well as in response to competitive pressures on their marketing and pricing decisions. Regulators and carriers alike trumpet these access charge and usage-rate reductions. The

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[20] *See* Todd Wallack, "Telephone rates are rising at a blistering pace," Seattle Post-Intelligencer (Feb. 3, 2004) (http://seattlepi.nwsource.com/business/159056_phonerates03.html); Morgan Jindrich, "Prepaid Profit Plan for Wireless Companies," The Center for Public Integrity (Oct. 20, 2003) (http://www.openairwaves.org/telecom/printer-friendly.aspx?aid=67); Andrew Backover, "Some phone companies call on higher rates," USA Today (Jan. 2, 2004); Jeff Smith, "Fee frenzy,," Rocky Mountain News (Aug. 4, 2003) (http://www.rockymountainnews.com/drmn/technology/article/0,1299,DRMN_49_2156788,00.html).

carriers, however, have not seen fit to make consumers adequately aware of the hidden fees and charges that virtually all consumers now pay for telephone service. Nor do regulators seem inclined to rein in this practice.

Moreover, even if consumers were better informed of the carriers' pervasive use of surcharges, it is unlikely that this information would provide adequate protection since consumers generally shop among carriers based on the lowest monthly and usage-based rates for the telecommunications service offered, and do not consider the myriad fees and surcharges that also apply.[21] Nor would providing consumers with such information prevent carriers from over-recovering their regulatory compliance costs, since there simply is no basis to compare what those costs are to the revenues produced by the carriers' fees.

Unless the Commission takes action now, carriers will recover more and more of their operating costs through "regulatory compliance" surcharges and other line items about which

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[21]Carriers will no doubt assert that such information is available "on their websites." For a few carriers, this is actually true. However, for many other carriers, this assertion is as deceptive as the line item charges themselves. In preparing this petition, NASUCA searched many of the carriers' websites in vain for detailed information regarding their monthly fees and surcharges. Either the information is not there, or it is buried where the information is practically impossible to locate. Further, very few consumers will spend the time necessary to surf the Internet to find out all the facts regarding hidden carrier fees and charges – even at this late date, not everyone has access to the Internet.

Carriers will also no doubt assert that information regarding their monthly regulatory charges is contained in their "welcome packages" or on somewhere (usually the back of the last page) of the customer's bill. This is hardly helpful. The customer has already taken service at this point and is incurring the monthly fees. Moreover, most customers get all their information regarding their service and its cost from the page listing the amount owed for service, not from welcome packages and definitions at the back of the bill.

consumers either know nothing or about which they are misled or confused. These surcharges bear no clear relationship to the "regulatory" costs they purportedly recover.

1. A Sampling of Representative IXC Surcharges.

In the second half of 2003, both AT&T Corporation ("AT&T") and Sprint Communications Company, LP ("Sprint") – two of the "Big Three" IXCs – introduced virtually identical, $0.99 per month surcharges applicable to nearly all their long distance customers. MCI WorldCom, Inc. ("MCI") and BellSouth Long Distance, Inc. ("BellSouth") quickly followed suit and either introduced new surcharges or greatly increased existing ones. The big IXCs apparently took their cue from smaller carriers that historically have recovered a portion of their operating costs through "regulatory" surcharges, [22] based on the "green light" for such line items given in the Commission's *Contribution Order*.

a. AT&T's "Regulatory Assessment Fee."

In April 2003, AT&T began advising its customers nationwide that, beginning July 1, 2003, their bills would "include a [$0.99] per month Regulatory Assessment Fee" that "applies each month in which [there are] any AT&T charges" on the customer's bill.[23] According to AT&T, the fee helps it to "recover the following costs: interstate access charges; regulatory compliance and proceedings costs and property taxes."[24] A disclaimer advises customers that "[t]his fee is not a tax or charge required by the government" and directs customers to the

[22] *See* sections e. through g., below.

[23] *See* AT&T Bill Insert (copy attached as Attachment A).

[24] *Id.*

company's toll free customer service telephone number and website for more information.[25]

b. Sprint's "Carrier Cost Recovery Charge."

Sprint lost little time in following AT&T's lead. In July 2003 – just three months after AT&T's action – Sprint began advising its customers that, starting September 1, 2003, customers' bills nationwide would "include a [$0.99] monthly Carrier Cost Recovery Charge"[26] in order to "recover its regulatory costs."[27] The amount of the charge is not the only thing the two carriers' fees have in common. Like AT&T, Sprint lumps together numerous operating expenses as justification for imposing its new surcharge, advising that its surcharge helps it recover various costs, "including the costs of administering relay services for deaf and hard-of-hearing consumers, the North American Numbering Plan ["NANP"], other regulatory compliance items, and certain property taxes."[28] Like AT&T, Sprint imposes the charge "each month [the customer has] any Sprint long distance charges or usage activity."[29] Finally, taking another page from AT&T's book, Sprint includes a perfunctory disclaimer, advising customers

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[25] *Id.* AT&T's website contains information regarding the Regulatory Assessment Fee that substantially repeats the information set forth in its bill insert, as well as "Frequently Asked Questions" ("FAQs") regarding the fee. Among other things, the FAQs include the company's rationale for imposing its Regulatory Assessment Fee. AT&T claims that it is assessing the fee because "in the competitive environment we are in, we cannot continue to absorb these [access charges, property taxes and expenses associated with regulatory proceedings and compliance]." AT&T FAQs, Q1 (copy attached as Attachment B). AT&T also advises that customers enrolled in its local service plans are not subject to the Regulatory Assessment Fee. *Id.*, Q6.

[26] *See* Sprint Bill Insert (copy attached as Attachment C).

[27] As is obvious, the charges imposed by both AT&T and Sprint are the same - $0.99 per month – although there is no way to tell if the costs recovered by each of the surcharges is the same.

[28] *Id.*

[29] *Id.*

that "[t]his fee is not a tax or charge required by the government."[30]

c. MCI's "Carrier Cost Recovery Charge."

On July 1, 2003, about the same time that AT&T introduced its Regulatory Assessment Fee, MCI tripled the monthly "Carrier Cost Recovery Charge" imposed on customers making long distance interstate and international calls – from 0.5% to 1.4%.[31] Aside from the fee structure, MCI's Carrier Cost Recovery Charge looks remarkably similar to the surcharges imposed by the other two members of the "Big Three" IXCs. For example, MCI's surcharge ostensibly recovers costs MCI incurs "with regard to Telecommunications Relay Service, national number portability, and federal regulatory fees."[32] MCI also uses the surcharge to recover "expenses the Company incurs with regard to . . . universal service funds . . . ."[33]

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[30] *Id.* Unlike AT&T, Sprint is laconic in describing the Carrier Cost Recovery Charge on its website. Under the topic "recent changes to Sprint's terms and conditions of service," Sprint advises only that "customers will be assessed a $0.99 Carrier Cost Recovery Charge each month, effective September 1, 2003." *See* http://www.sprint.com/ratesandconditions/residential/documents/resratechanges.pdf. Sprint did not include the Carrier Cost Recovery Charge as a topic on the "Consumer Tips" portion of its website which addresses monthly recurring charges, fees and taxes that appear on customers' bills. *See* http://www2.sprint.com/as_scope/values/consumer_info/topics.do?topic=1111248. Sprint did advise customers that, upon implementation of the Carrier Cost Recovery Charge, it would no longer assess its "Carrier Property Tax Charge," which was a "1.41% [assessment] applied to billed interstate and international charges (including usage and non-usage) each month." *Id.*

[31] *See* http://www.theneighborhood.com/res_local_service/Taxes/Taxes_WV.html

[32] *Id.* This same page notes that MCI recovers the Commission-mandated local number portability charge of $0.23/month. It is unclear how the "national number portability" costs associated with the Carrier Cost Recovery Charge are different than the local number portability costs that MCI is allowed to recover.

[33] *See* http://consumer/mci.com/mci_service_agreement/res_most_recent_info.jsp. It is not clear (Footnote con't.)

Unlike AT&T and Sprint, MCI also imposes a monthly Property Tax Surcharge on its customers' interstate and international customers' calls, including usage and non-usage.[34] This surcharge is intended to "recover a portion of the property tax that [MCI] pays to state and local jurisdictions." At about the same time it tripled its Carrier Cost Recovery Charge, MCI also increased its Property Tax Surcharge from 1.03% to 1.4%.[35]

d. BellSouth's "Carrier Cost Recovery Fee."

BellSouth introduced its interstate "Carrier Cost Recovery Fee," effective January 1, 2004. BellSouth's surcharge is virtually identical to the monthly surcharges adopted by AT&T, Sprint and MCI. Like AT&T and Sprint, BellSouth's Carrier Cost Recovery Fee is a fixed, $0.99/month surcharge applied each month a residential subscriber has interstate long distance charges – such as monthly service charges or usage – on a bill. The similarity BellSouth's new charge bears to the other IXCs' fees does not end with cost structure or nomenclature. Like the other IXCs, BellSouth's surcharge ostensibly recovers "certain costs associated with state-to-state access charges, expenses associated with regulatory proceedings and compliance, and billing expenses."[36]

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how the Company's recovery of expenses incurred "with regard ... to universal service funds" through the Carrier Cost Recovery Charge dovetails with the Federal Universal Service Fee that MCI already collects.

[34] *See* http://consumer/mci.com/mci_service_agreement/res_most_recent_info.jsp.

[35] *Id.*

[36] *Id.* Unlike the other IXCs, however, BellSouth specifically exempts several classes of customers from the charge, namely non-residential customers and certain classes of residential customers. BellSouth exempts residential customers subscribed to the following plans: Basic Savings, Basic Savings Value, State Talk, State Talk Value, Unlimited, Unlimited Talk, and (Footnote con't.)

e. TalkAmerica's "TSR Administration Fee."

On its website, TalkAmerica describes a series of taxes and surcharges associated with its long distance service, including a "TSR Administration Fee."[37] TalkAmerica advises that the TSR Administration Fee is "[a] fee that reimburses the Company for *administrative costs incurred to collect* federal, state, and local taxes, surcharges, and regulatory fees."[38] TalkAmerica does not provide information on its website identifying the amount of the TSR Administrative Fee. However, NASUCA understands that the TSR Administration Fee is a $1.25 monthly surcharge placed on all TalkAmerica customers' bills.

f. OneStar Long Distance, Inc.'s Surcharges.

OneStar Long Distance, Inc. ("OneStar") presents perhaps the most egregious example NASUCA has found of IXCs using hidden fees and surcharges to cover ordinary operating costs. Unlike the other IXCs who use one or maybe two, surcharges to recover their operating costs, OneStar has a panoply of surcharges and fees ostensibly to recover such its costs. For example, OneStar imposes a monthly "Interstate Access Surcharge" upon its customers – $2.95/month for business customers and $1.95/month for residential customers.[39] OneStar provides no

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Unlimited MultiLine plans, as well as residential customers with domestic Residential Message Telecommunications Service. *See* http://www.tariffs.net/tariffs/481/Res_Notice_051402.pdf.

[37] *See* https://secure.talk.com/web.cgi/user/cs-answerspop-plans.htm?answer=ldrates8.

[38] *See* https://secure.talk.com/web.cgi/user/cs-answerspop-ldtaxes.htm (emphasis added).

[39] *See* "OneStar Long Distance, Inc. Interstate Rates and Service Schedule No. 1," Section 3.5 (available at http://www.onestarcom.com/includes/file_download.asp?ID=717).

explanation regarding what costs its Interstate Access Surcharge is intended to recover.[40]

Further, OneStar assesses its customers both a "Universal Connectivity Charge" – a 3.2% assessment on residential customers and 4.2% on business customers – in addition to the FCC-authorized assessment for the Universal Service Fund, which is currently 8.7%.[41] Both charges appear to recover OneStar's federal universal service assessments. Moreover, OneStar imposes a "Primary Carrier Charge" on its customers – $1.51/month for residential customers, $4.61/month per line for business customers.[42] OneStar provides its customers no explanation for either the Universal Service Connectivity Charge or its Primary Carrier Charge.[43]

g. VarTec Telecom, Inc.'s Surcharge.

VarTec Telecom, Inc. ("VarTec") simply adds an additional $1 surcharge on top of the FCC-authorized Federal universal service assessment that VarTec imposes on its customers' interstate and international calls.[44] Keeping it simple in the extreme, the company provides no information explaining what the surcharge is intended for on its website.

2. A Sampling Of Wireless Carriers' Surcharges.

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[40] *Id.*

[41] *Id.*, Sections 3.25 and 3.28. OneStar includes contributions for state-specific universal service funds as additional assessments under the "Universal Connectivity Charge" provision of its interstate services tariff. *Id.*, Section 3.25(a) - (d).

[42] *Id.*, Sections 3.25 and 3.26.

[43] *Id.* In West Virginia, at least, OneStar also imposes a monthly "Property Acquisition Charge" of 0.003% of net charges, including usage and other miscellaneous charges, to its intrastate long distance customers' accounts. OneStar Communications, LLC Tariff P.S.C. W.Va. No. 1, Section A.28, original page 64. Once again, there is no explanation of what costs OneStar is recovering through its Property Acquisition Charge.

[44] *See* http://vartec.com/ratechanges/usf_charge.asp.

Wireline IXCs are not the only carriers imposing monthly surcharges on their customers. Many of the Nation's wireless carriers – including the largest carriers – are also taking advantage of the loopholes in the Commission's *TIB Order* and *Contribution Order* that allow carriers to recover operating costs by imposing fees, line items and surcharges.

According to the Center for Public Integrity ("CPI"), nine out of the ten largest wireless carriers currently impose monthly surcharges, ranging from a low of $0.05 per month, previously charged by Verizon Wireless, to a whopping $2.83 per month charged by Nextel.[45] Like their wireline brethren, the wireless carriers identify a smorgasbord of regulatory and administrative programs whose costs the carriers recover through these surcharges. The programs identified by the wireless carriers include implementing wireless enhanced 911 ("E911"), telephone number pooling, wireless local number portability, the Communications Assistance for Law Enforcement Act ("CALEA"), and digital TTY service. A non-exhaustive sampling of the wireless carriers' "regulatory" surcharges is set forth below.

a. AT&T Wireless' Regulatory Programs Fee.

AT&T Wireless Services, Inc. ("AWS") currently collects a $1.75 "Regulatory Programs Fee," for each customer's line each month.[46] This fee, AWS claims, is intended to "help fund [AWS'] compliance with various government mandated programs which may not be available

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[45] *See* M. Jindrich, "Prepaid Profit Plan for Wireless Companies," Center for Public Integrity (Oct. 2003) ("CPI Article") (available at http://www.openairwaves.org/telecom/report.aspx?aid=67.

[46] *See* http://www.attwireless.com/personal/plans/plans.jhtml?planpage=national&_requestid=27536 According to CPI, AWS apparently was charging about one-third of its customers such fees in July 2003. NASUCA has not confirmed that statement.

yet to subscribers." Like several wireline carriers, AWS advises that its fee "is not a tax or government required charge."

b. Verizon Wireless' Regulatory Charge.

Until recently, Verizon Wireless imposed a $0.05/month Regulatory Charge on each customer's phone, in addition to the Commission-authorized "Federal Universal Service Charge."[47] This was the lowest of any wireless carriers' monthly line items, charges or fees. Unfortunately, this situation has changed. Verizon Wireless has advised its customers that:

> Beginning March 1, 2004, our Regulatory Charge, which helps defray Verizon Wireless' ongoing costs of complying with various regulatory mandates, will increase from $0.05 to $0.45 per month to help defray the costs of complying with the FCC's local number portability requirements. The Regulatory charge is not a tax, is our charge and is subject to change from time to time.[48]

In other words, Verizon Wireless has now increased its Regulatory Charge by some 800%.

c. ALLTEL's Regulatory Cost Recovery Fee And Others.

ALLTEL Wireless ("ALLTEL") imposes a variety of surcharges on its customers. In addition to applicable federal, state and local taxes, federal and state USF surcharges and 911 fees, ALLTEL charges each wireless customer: (1) a $0.41 Regulatory Cost Recovery Fee "to recoup expenses incurred to provide government mandated services"; and (2) a $0.59 Telecom Connectivity Fee "to recover costs incurred in connecting calls to other carrier networks."[49]

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[47] http://www.verizonwireless.com/ics/plsql/plan_detail.intro?p_plan_category_id=10045&p_section=PLANS_PRICING.

[48] *See* Verizon Wireless Bill Insert (copy attached as Attachment D).

[49] *See* "Explanation of Fees and Services," http://www.alltel.com/estore/wireless/products/total.

d. Cingular Wireless' Regulatory Cost Recovery Fee.

According to information on its website, Cingular Wireless ("Cingular") imposes a "Regulatory Cost Recovery Fee" of "up to" $1.25/month on all customers' plans.[50] Cingular explains that this fee is used to "help defray its costs incurred in complying with obligations and charges imposed by State and Federal telecom regulation."[51] According to the company, the Regulatory Cost Recovery Fee is in addition to a gross receipts surcharge and State and Federal Universal Service charges. As with most of the CMRS carriers, Cingular provides the standard disclaimer, advising that its Regulatory Cost Recovery Fee is not a "tax or a government required charge."

e. Leap Wireless' Regulatory Recovery Fee.

Cricket Communications, the operating subsidiary of Leap Wireless, imposes a $0.45 "regulatory recovery" fee in order to "recoup [its] costs for complying with regulations related to number pooling and local number portability."[52] On its website, the company sets forth the usual disclaimer that the regulatory recovery fee "is not a tax or charge required by the government."

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[50] *See* http://onlinestore.cingular.com/webapp/wcs/stores/servlet/ES_PROD_RATE?storeAlias=scalax&storeId=11451&catalogId=11451&langId=-1&svcAreaId=SBC&ratePlanType=Local. The CPI Article indicated that Cingular recovers a fee of from $0.32 to $0.75/month, of which $0.28 is applied to costs of number pooling/number portability.

[51] *Id.*

[52] *See* http://www.cricketcommunications.com/faqs.asp#fees.

f. Nextel's Federal Programs Cost Recovery Fee.

Nextel appears to be "king of the hill" among wireless carriers, imposing the largest monthly surcharge of any to recover its costs of doing business. Nextel's website advises that the company imposes a "Federal Programs Cost Recovery Fee" or "FPCR," of $1.55 or $2.83 per month.[53] According to Nextel, this fee is "charged for one or more of the following: E911, number pooling and wireless number portability." The website also includes a disclaimer, stating that the FPCR fee "is not a tax or government required charge."

g. Sprint PCS' Various Charges.

Sprint PCS does not readily provide information quantifying its monthly surcharges on its website. Instead, the company advises only that it invoices customers "for fees that we collect and remit to the government such as Universal Service, and for surcharges that we collect and keep to pay for the costs of complying with government mandates such as number pooling and portability, and Enhanced 911 service."[54] However, Sprint PCS' bills contain the missing information. Under the "Surcharges & Fees" portion of its monthly customer's bill, Sprint PCS indicates that it collects $1.10 per line per month for "Federal Wireless Number Pooling and Portability," $0.40 per line per month for "Federal E911," and $0.82 per line per month for the "Federal Universal Service Fund."[55] Sprint PCS advises that these "charges are neither taxes nor

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[53] http://nextelonline.nextel.com/NASApp/onlinestore/Action/EnterZipCode.

[54] *See* "Taxes and Surcharges," http://www.sprintpcs.com/common/popups/popLegalTermsPrivacy.html.

[55] *See* Sprint PCS Account Summary (copy attached as Attachment E).

government imposed assessments."[56]

h. US Cellular's Regulatory Cost Recovery Charges.

US Cellular advises customers that they are responsible for, among other things, "regulatory cost recovery charges (such as Universal Service Fund, Enhanced 911 and Wireless Number Portability); surcharges; and taxes," and that "regulatory cost recovery fees, surcharges, and taxes are subject to change without notice."[57] Although NASUCA could not find information identifying the specific amount of these fees, it understands that in addition to the federal USF surcharge, US Cellular collects a $0.55 per month fee from customers, ostensibly to recover its costs associated with wireless number portability and number pooling.

i. Western Wireless' Regulatory and Administrative Surcharge.

Western Wireless advises that the company, "like other wireless providers," has implemented a monthly surcharge per wireless number to help "offset the cost of complying with the obligations being imposed on wireless telecommunications companies by state and federal governments."[58] More specifically, the company advises that this surcharge offsets its "cost of complying with state and federal rules and initiatives advancing programs such as Enhanced 911,

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[56] http://www.sprintpcs.com/common/popups/popLegalTermsPrivacy.html.

[57] *See* "Customer Service Agreement," http://www.uscc.com/uscellular/SilverStream/Pages/r_terms_conditions.html.

[58] http://www.cellularonewest.com/FAQSmart.asp.

Telephone Number Pooling, Wireless Number Portability and CALEA."[59] On customer bills, the surcharge is identified as the "Regulatory and Administrative Surcharge," though Western Wireless advises that the surcharge "is neither a tax nor mandated." Effective January 20, 2004, Western Wireless increased this surcharge nearly 75%, from $0.97 to $1.70 per month per number.

3. The Sheer Number of Carriers and Charges Demonstrates the Magnitude of the Problem.

According to the Commission's latest report, there are roughly 1,000 IXCs[60] and approximately 1,300 CMRS carriers[61] operating in the United States. Obviously, NASUCA did not canvas every carrier to determine whether it imposes regulatory surcharges on its customers and, if so, what those fees purport to recover or the amount of each such fee. One thing is certain: The list of line item charges identified herein is not exhaustive. The sheer number of carriers and charges cited in this Petition, however, demonstrates the magnitude of the problem and the need for sweeping action by the Commission.[62]

It would be administratively impossible to look at each carrier, or each carrier's fee, to

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[59] *Id.*

[60] *See* "Statistics of Communications Common Carriers," p.iv (Rel. March 2, 2004) (available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/SOCC/02socc.pdf).

[61] *See I/M/O Numbering Resource Optimization, et al.*, Fourth Report and Order, CC Docket Nos. 99-200, 96-98 and 95-116, FCC 03-126, ¶ 18 Fn. 51 (Rel. June 18, 2003) (citing statistics compiled by the Wireless Telecommunications Bureau).

[62] For example, many of the CMRS carriers discussed by NASUCA may have additional surcharges for such things as state-imposed 911/E911 fees or state universal service fund assessments. The websites maintained by many carriers simply do not provide a user-friendly summary of any and all applicable monthly line item charges, surcharges, fees and assessments that a customer may experience.

determine whether the fee is sufficiently and accurately described, whether consumers are adequately informed of the fee, or whether the fee reasonably recovers the cost incurred by the carrier in complying with the regulatory program(s) to which the fee is attributed. The only reasonable action the Commission can take to both protect consumers and ensure that the pro-consumer, pro-competitive purposes of the telecommunications laws are met, is to adopt the action urged upon it by NASUCA: Prohibit all line-items, surcharges and fees unless both recovery of the fee, and the amount of the fee carriers are entitled to assess, is expressly mandated by federal, state or local government.

IV. ARGUMENT.

A. Regulatory Surcharges Imposed by Both Wireline and Wireless Carriers Are Subject to the Pro-Consumer Principles Adopted by the Commission in the TIB Order.

In the *TIB Order*, the Commission adopted three "truth-in-billing" principles in order to ensure that consumers receive "thorough, accurate, and understandable bills" from their telecommunications carriers.[63]

> First, that consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new providers;
>
> Second, that bills contain full and non-misleading descriptions of charges that appear therein; and
>
> Third, that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill.[64]

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[63] *TIB Order*, ¶ 5.

[64] *Id.*

These principles apply to both the IXCs and CMRS carriers and govern the carrier surcharges and fees that are the subject of NASUCA's Petition.[65]

In order to implement its general "truth-in-billing" principles, the Commission adopted certain "minimal, basic guidelines . . . designed to prevent the types of consumer fraud and confusion evidenced in the tens of thousands of complaints we have received."[66] Under the first principle dealing with the organization of bills, the Commission directed that telephone bills must be clearly organized and include information clearly identifying the service provider associated with each charge.[67] For the second principle, dealing with full and non-misleading billed charges, the Commission adopted three guidelines addressing billing descriptions, "deniable" and "non-deniable" charges, and standardized labels for charges resulting from federal regulatory action.[68] The guidelines implementing the Commission's third principle, dealing with clear and conspicuous disclosure of inquiry contacts, included the provision of toll-free numbers for consumers to contact appropriate customer service representatives.[69]

These guidelines apply fully to the IXCs. With regard to CMRS providers, the Commission concluded that some of the guidelines it was adopting "may be inapplicable or

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[65] *Id.*, ¶ 13 ("the broad principles we adopt to promote truth-in-billing should apply to all telecommunications carriers, both wireline and wireless").

[66] *Id.*, ¶5.

[67] *Id.*, ¶¶ 28-36; *see* 47 C.F.R. § 64.2401(a).

[68] *Id.*, ¶¶ 37-65; *see* 47 C.F.R. § 64.2401(b) & (c).

[69] *Id.*, ¶¶ 66-68; *see* 47 C.F.R. § 64.2401(d).

unnecessary in the CMRS context."[70] However, the Commission indicated that it intended "to require CMRS carriers to comply with standardized labels for charges resulting from Federal regulatory action, if and when such requirements are adopted."[71] Significantly, the Commission stated that it expected:

> [T]o apply the same rule to both wireline and CMRS carriers, however, because we believe that labels assigned to charges related to federal regulatory action should be consistent, understandable, and should not confuse or mislead customers.[72]

Finally, the Commission noted that, although several of the guidelines it adopted in the *TIB Order* did not apply to wireless carriers, "such providers remain subject to the reasonableness and nondiscrimination requirements of sections 201 and 202 of the [1934] Act, and our decision here in now way diminishes such obligations as they may relate to billing practices of CMRS carriers."[73]

Taken together, these principles and guidelines, the Commission believed, "represent

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[70] *Id.*, ¶ 17.

[71] *Id.*, ¶ 18. In addition, the Commission made it clear that "there are two rules that we think are so fundamental that they should apply to all telecommunications common carriers," namely: (1) that the service provider associated with each charge must be clearly identified on the customer's bill, and (2) that each bill prominently display a telephone number that customers may call, free-of-charge, to question any charge on the bill. *Id.*, ¶ 17.

[72] *Id.*, ¶ 18.

[73] *Id.*, ¶ 19.

fundamental principles of fairness to consumers and just and reasonable practices by carriers."[74] Neither wireline nor wireless carriers are exempt from the application of these principles and guidelines.

B. The Carriers' Surcharges Violate The TIB Order's Second Principle – "Full and Non-Misleading Billed Charges" – And the Implementing Guidelines.

The second, broad principle adopted by the Commission in the *TIB Order* – "Full and Non-Misleading Billed Charges" – applies to the carrier surcharges at issue here. This principle requires "that bills contain full and non-misleading descriptions of charges that appear therein. . . ."[75] As discussed above, this principle applies to wireline and wireless carriers with equal rigor. With regard to why full and non-misleading description of charges should be included in all telecommunications customers' bills, the Commission stated:

> In our view, providing clear communication and disclosure of the nature of the service for which payment is expected is fundamental to a carrier's obligation of reasonable charges and practices. Indeed, we find it difficult to imagine any scenario where payment could be lawfully demanded on the basis of inaccurate, incomplete, or misleading information. Moreover, to permit such practices in the context of telecommunications services is particularly troublesome in light of the rapid technological and market developments, and associated new terminology, that can confuse even the most informed and savvy telecommunications consumer.[76]

As previously noted, the Commission adopted three specific guidelines To implement its full and non-misleading billed charges principle. These guidelines deal with: (1) billing

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[74] *Id.*

[75] *Id.*, ¶ 37.

[76] *Id.*